

## MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

## SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>	District      Utah	FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH FEB 01 2021 BY D. MARK JONES CLERK DEPUTY CLERK
Name ( <i>under which you were convicted</i> ): Antoine Johnson	Docket or Case No.: 18-cr-127-JNP-DBP-1	
Place of Confinement: Phoenix FCI	Prisoner No.: 26559-081	
UNITED STATES OF AMERICA	Movant ( <i>include name under which convicted</i> ) V. Antoine Johnson	

**MOTION**

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

US District Court, Salt Lake City

Case: 2:21-cv-00067

Assigned To : Parrish, Jill N.

Assign. Date : 2/1/2021

Description: Johnson v. USA

(b) Criminal docket or case number (if you know): 18-cr-127-JNP-DBP-1

2. (a) Date of the judgment of conviction (if you know): 1/7/2020

(b) Date of sentencing: 1/3/2020

3. Length of sentence: 96 months and 6 years of supervised release

4. Nature of crime (all counts):

Drug conspiracy, various counts related to drug distribution, use of communication facility, felon in possession of firearm, and 18 U.S.C. sec. 924(c)

5. (a) What was your plea? (Check one)

(1) Not guilty

(2) Guilty

(3) Nolo contendere (no contest)

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

Heroin distribution

6. If you went to trial, what kind of trial did you have? (Check one)

Jury

Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes

No

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8. Did you appeal from the judgment of conviction? Yes  No

9. If you did appeal, answer the following:

(a) Name of court: Tenth Circuit

(b) Docket or case number (if you know): 20-4006

(c) Result: remand

(d) Date of result (if you know): 5/12/2020

(e) Citation to the case (if you know): none

(f) Grounds raised:

Improper sealing of plea supplement.

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(g) Did you file a petition for certiorari in the United States Supreme Court? Yes  No

If "Yes," answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised:  
\_\_\_\_\_  
\_\_\_\_\_

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10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

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(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No 

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No 

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes  No (2) Second petition: Yes  No 

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE: Ineffective Assistance of Counsel**

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- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

My lawyer should have been more aggressive and sought dismissal of some of the charged counts before negotiating my PLEA Agreement. The charges related to the seizure of drugs from my co-defendants home, and the charge for possessing a firearm in furtherance of a drug trafficking offense-Which put undue pressure on me to plaed guilty.

**(b) Direct Appeal of Ground One:**

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- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

- (2) If you did not raise this issue in your direct appeal, explain why:

It was ineffective

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**(c) Post-Conviction Proceedings:**

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- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

- (3) Did you receive a hearing on your motion, petition, or application?

Yes  No

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):  
\_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:  
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**GROUND TWO: Gun Enhancement**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

My attorney should have objected to the 2-level enhancement for possessing a firearm . For that enhancement to apply, there needed to be a connection between the drugs and the recovered firearm. But the presentence report makes clear that the gun was recovered from my house, where no drugs were found.

**(b) Direct Appeal of Ground Two:**

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(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective for not objecting to the gun

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND THREE:** Duplicity and Multiplicity of counts charged

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

MY attorney did not seek dismissal of charges that did not pertain to defendant. Counts 1,2,3,4,5,6,7,9,10,11,12,14.

Which put undue pressure on the defendant to plead guilty.

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**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):  
\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:  
\_\_\_\_\_

**GROUND FOUR: C.I. being stripped of CI status**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

My attorney failed to bring up the fact that during the investigation that the C.I. who in fact had been an agent of the above mentioned case. My attorney knew before I plead guilty that the man who co-operated against me was dirty and had been caught with five pounds of meth. My attorney did not inform me of these facts before I plead guilty. If my lawyer had informed me of this fact, I would not have plead guilty and instead would have gone to trial, where I would have tried to beat the charges by attacking the cooperator's credibility.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

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Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No 

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No 

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No 

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

At the time of my appeal I was not aware of the total facts that I am raising at this time.

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes  No   
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.
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15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:  
(a) At the preliminary hearing:

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(b) At the arraignment and plea:

Carolyn Perkins PO BOX 520704 Salt Lake City, Utah 84106

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(c) At the trial:

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(d) At sentencing:

Carolyn Perkins PO BOX 520704 Salt Lake City, Utah, 84106

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(e) On appeal:

Antoine Johnson #26559-081 FCI Phoenix, Phoenix AZ. 85086

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(f) In any post-conviction proceeding:

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(g) On appeal from any ruling against you in a post-conviction proceeding:

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16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

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(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

Not completely sure if the Statute of Limitations have run out or not. Yet, due to the COVID-19 outbreak this has caused an undue hardship upon myself. Since there is a time line constraint that needs to be met. I have very limited, if NO access to the Law Library or to the Courts where I can research what i need to in order to file this motion and get it in in a timely manner.

I have sent a motion to extend my time line for the filing of this motion. It has yet to be ruled on.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Vacate the Conviction or Remove the Gun Enhancement

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or any other relief to which movant may be entitled.

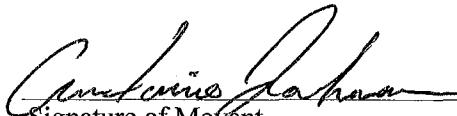
\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on

1/22/21

(month, date, year)

Executed (signed) on \_\_\_\_\_ (date)

  
\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Spoke with Appeals Attorney today; I was told its best to file this as is, without case law. Since I'm not 100% sure if I need it to be granted a Attorney for this matter, I will when to this issue.